IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

W RIT PETITION NO. 196 OF 2005

Computron Systems P.Ltd. & Ors. ... Petitioners

V/s

The State of Maharashtra & Anr. ... Respondents

Mr. A.P. Mundargi with S.D. Mogra for petitioners

Smt. Manjula Rao for respondent No.2

Shri D.P. Adsule,APP for the State.

Coram : V.M. Kanade, J.

Dated : 05/04/2005

P.C. :-

1 I have heard the learned counsel for the petitioners, respondent No.2 and APP for the State.

2 The petitioners are challenging the order passed by the Metropolitan Magistrate on the complaint filed under section 138 of the Negotiable Instruments Act.

3 The contention of the petitioners is that there was no existing libaility or debt and, therefore, those cheque was dishonoured .The complaint would not fall within the purview of section 138 of the said Act. It is further contended that so far as the accused No.3 is concerned, there are no pleadings in the complaint to show that the

accused was concerned in any way to the said transaction.It is not possible to accept the contention raised by the learned counsel for the petitioners. The learned counsel for the petitioners has taken me to correspondence between the parties in order to indicate that there was no existing liability and that the said cheque was kept with one one Mr.Nimesh Kampani in escrow. It is submitted that there was no question of clearing the said cheque. It is further submitted that cheque which was given in escrow was fraudulently handed over to the complainant though the instructions were given by the accused not to hand over the cheque.

3 All these issues will have to be decided by the Magistrate after the evidence is adduced by both parties and only thereafter a finding can be given as to whether there was any existing debt or liability. Similarly, if no material is supplied by the complainant to show that accused No.3 was concerned in any way with the transaction in question, the trial court is found to acquit the accused No.3 after appreciating the evidence of parties. In the result, criminal writ petition is dismissed.

4 It is further clarified that the petitioner No.3 shall be exempted from appearing in the trial court. Her plea will record through her advocate. The Magistrate may direct her to remain only at the time of recording her statement under section 313 or in the event she desires to give evidence in the court. The trial court also to consider an application made by the accused No.2 for

exemption sympathetically . The accused No.2 should remain present on each and every date unless his presence is required. It is clarified that all the question raised in this petition are kept open.

(V.M. Kanade,J.)